SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. [redacted] 4

NATIONAL LABOR RELATIONS BOARD ..... *Petitioner*

v.

LION OIL COMPANY ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT, LION OIL COMPANY, IN OPPOSITION TO PETITION

JEFF DAVIS (A)
SAM PICKARD
Lion Oil Building
El Dorado, Arkansas
Attorneys for Respondent

PARAGON PRINTING CO., LITTLE ROCK

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QUESTION PRESENTED

The question presented is—Do employees who go out on economic strike, when a contract between their employer and their union governing their working conditions is in full force and effect, to force an immediate termination of the contract, engage in activity which is unprotected under the Labor Management Relations Act of 1947?

ARGUMENT

We accept the statement of the case made by distinguished counsel for the Petitioner.

We respectfully submit that, on that statement, the petition for writ of certiorari should be denied.

The statement contained in the first paragraph of that portion of the petition which appears under the heading "Question Presented" demonstrates that the position taken in this case by the majority of the members of National Labor Relations Board, and by distinguished counsel in their argument to sustain the Board's position, is conceived in error.

Counsel for the Petitioner state in that paragraph:

> "Section 8 (d) (4) of the Act provides that *parties* who wish to modify or terminate a collective bargaining contract must 'continue . . . in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice [of *their* wish to modify or terminate] is given or until the expiration date of such contract, whichever occurs later'" (emphasis supplied).

That statement is not a correct statement as to the provision of the statute to which reference is made therein.

Directing our attention particularly to sub-section (4) of Section 8 (d) of the Act, which must be read in connection with the words contained in the first seven lines of the proviso of Section 8 (d), we see that the provisions of the Act to which counsel for the Petitioner refer in the paragraph quoted are as follows:

> "• • • where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that *no party* to such contract shall terminate or modify such contract, unless *the party desiring such termination or modification*—
> • • •
>
> (4) continues in full force and effect, without resorting to strike or lock-out, all of the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever is later • • •" (emphasis supplied).

Counsel for the Petitioner have misconstrued those provisions of the Act. They have nothing to do with a situation in which the *parties* to a labor relations contract wish to modify or terminate it. They have only to do with a situation in which *one of the parties* to such a contract desires to modify it or terminate it by his unilateral act.

Those provisions of the statute proscribe a labor union calling a strike, and proscribe the men represented by it from participating in a strike, when that strike is in violation and repudiation of an existing labor contract.

Those provisions go even further to proscribe a strike in the absence of sixty-day notice of termination of the contract even though, by the words of the contract, it could be terminated within a shorter period.

We note that counsel for the Petitioner, in quoting, in Note 3 to their petition, a statement of Senator Taft, cut short the sentence quoted. The full sentence to which reference is made, as quoted in Note 3 to the opinion in *U. A. W. v. O'Brien*, 339 US 454, is as follows:

> "That means that we recognize freedom to strike when the question involved is the improvement of

> wages, hours, and working conditions, *when a contract has expired and neither side is bound by a contract*" (emphasis supplied).

The quotation in *Amalgamated Association* v. *W. E. R. B.*, 340 US 383, n. 21, is to the same effect.

The provisions of Section 8 (d) of the Act, which we have quoted, wove into the fabric of the National Labor Relations Act the decision of this Honorable Court rendered several years before in *NLRB* v. *Sands Manufacturing Company*, 306 US 332. In the opinion in that case this Court set forth the principle, for all to see and for all to heed, that employees, who strike in repudiation of the provisions of an existing contract between their employer and their Union representative, thereby lost the protection otherwise afforded them by the provisions of the National Labor Relations Act.

Our study of the decisions of this Court has not disclosed to us any susbsequent opinion in which the point so established in Sands has been involved.

However, in each of three cases before this Court since the decision in Sands, in the course of its opinion, this Court has indicated most clearly that, by its decision in the Sands case, the principle has become established that employees who strike in repudiation of an existing contract between their Union and their employer governing their working conditions lose the protection of the Act.

> *International Union* v. *W. E. R. B.*, 336 US 245, 259.
> *NLRB* v. *Rockaway News Supply Co.*, 345 US 71, 80
> *NLRB* v. *Local Union No. 1229*, 346 US 464, 477, n. 13

We, therefore, respectfully submit that the decision of the Court of Appeals for the Eighth Circuit in this case

did not "decide an important question of federal law which has not been, but should be, settled by this court", but to the contrary, reached a conclusion in complete conformity with the decision of this Court in the Sands Manufacturing Company case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

JEFF DAVIS

SAM PICKARD

Lion Oil Building

El Dorado, Arkansas

Attorneys for Respondent